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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 Adam Vincent Mlady,
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11 Petitioner,

12 v.

13 Al Smack,
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15 Respondent.

CASE NO. 3:19-cv-05549-BHS-DWC
ORDER FOR SUPPLEMENTAL
BRIEFING

16 The District Court has referred this action filed under 28 U.S.C. § 2254 to United States
17 Magistrate Judge David W. Christel. On June 11, 2019, Petitioner initiated this action
18 challenging his state court convictions and sentence. *See* Dkt. 1. Respondent filed his Answer on
19 July 26, 2019. Dkt. 11. The Court has reviewed the Petition, Respondent's Answer, and the state
20 court record. *See* Dkt. 6, 11, 12.

21 In the Answer, Respondent argues a state remedy remains available and the Petitioner
22 should be dismissed without prejudice because Petitioner is not presently time-barred from
23 seeking collateral review in the state courts. Dkt. 11. However, the time to file a petition or
24 motion for post-conviction relief has passed since the filing of the Answer and expired on
September 6, 2019. *See* RCW § 10.73.090 (no petition or motion for collateral attack may be
filed more than one year after the judgment becomes final). Based on the record before the

1 Court, it is not clear if Petitioner sought collateral review in state court, or if he has procedurally
2 defaulted on all his claims. *See Casey v. Moore*, 386 F.3d 896, 920 (9th Cir. 2004); *Eisermann v.*
3 *Penarosa*, 33 F.Supp.2d 1269, 1274 (D. Haw. 1999) (“[I]f a petitioner has never raised his
4 federal claim to the highest state court available and is now barred from doing so by a state
5 procedural rule, exhaustion is satisfied because no state remedy remains available, but the
6 petitioner has procedurally defaulted on his claim.”).

7 Accordingly, the Court needs additional information to make a determination on the
8 Petition. The Court orders Respondent to supplement his Answer and inform the Court whether a
9 state remedy remains available to Petitioner. Respondent’s supplemental answer must be filed on
10 or before September 30, 2019. Petitioner’s supplemental response, if any, is due October 7, 2019.
11 The Clerk is ordered to re-note the Petition for consideration on October 7, 2019.

12 Dated this 18th day of September, 2019.

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15 David W. Christel
16 United States Magistrate Judge
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